Calendar No. 560

86TH CONGRESS
1st Session

SENATE

REPORT
No. 562

EQUAL-TIME AMENDMENT TO COMMUNICATIONS ACT OF 1934

JULY 22, 1959.—Ordered to be printed

Mr. PASTORE, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 2424]

together with

ADDITIONAL VIEWS

The Committee on Interstate and Foreign Commerce reports favorably an original bill to amend the Communications Act of 1934 in order to provide that the equal-time provisions with respect to candidates for public office shall not apply to news and other similar programs, and recommend that the bill do pass.

The bill as herewith reported reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315(a) of the Communications Act of 1934 is amended by inserting at the end thereof the following:

"Appearance by a legally qualified candidate on any newscast, news interview, news documentary, on-the-spot coverage of news events or panel discussion, shall not be deemed to be use of a broadcasting station within the meaning of this subsection."

"SEC. 2. (a) The Congress declares its intention to re-examine the amendment to section 315(a) of the Communications Act of 1934 made by the first section of this Act, at or before the end of the three-year period beginning on the date of the enactment of this Act, to ascertain whether the remedy provided by such amendment has proved to be effective and practicable.

"(b) To assist the Congress in making the re-examination of the amendment made by the first section of this Act, the

> Federal Communications Commission shall make a report to the Congress, within 15 days after the close of the year beginning on the date of the enactment of this Act and within 15 days after the close of each of the following two years, setting forth (1) the information and data used by it in determining questions arising from or connected with such amendment, and (2) such recommendations as it deems necessary to protect the public interest and to assure equal treatment of all legally qualified candidates for public office under section 315 of the Communications Act of 1934."

PURPOSE OF LEGISLATION

This bill is designed to amend the Communications Act of 1934 so as to provide that the appearance by a legally qualified candidate on any news, news interview, news documentary, on-the-spot coverage of news events, or panel discussion shall not be deemed to be use of a broadcast station within the meaning of section 315(a). In other words, it would exempt any news, news interview, news documentary, on-the-spot coverage of news events, or panel discussion from the equal opportunity provisions of section 315(a).

The bill also provides that (*a*) the Congress will reexamine this legislation at or before the end of a 3-year period to ascertain whether the remedy provided has proved to be effective and practicable; and (*b*) in order to assist the Congress in making the reexamination the bill requires the Federal Communications Commission to make a report to the Congress annually setting forth the information and data used by it in determining questions arising from or connected with this legislation, and to make such recommendations as the Federal Communications Commission deems necessary to protect the public interest and to assure equal treatment of all legally qualified candidates for public office under section 315.

HISTORY OF SECTION 315

Section 315 of the Communications Act of 1934, as amended, presently provides that if a licensee permits a legally qualified candidate for public office to use his broadcast station, he shall afford equal opportunities to all other such candidates for that office. It provides further that the licensee does not have the power of censorship over the material broadcast and that no obligation is imposed by the licensee to allow the use of his station by any such candidate.

The Communications Act of 1934 repealed the Radio Act of 1927 (44 Stat. 1162). Section 18 of the 1927 act was identical with section 315. The 1927 act originated in the House of Representatives as H.R. 9971, 69th Congress, 1st session. The bill, as introduced, contained in section 5 a provision that:

> All matter broadcast by a radio station for which service money, or any other valuable consideration is directly or indirectly paid or promised to or charged or accepted by the station so broadcasting, from any person, firm, company, or corporation, shall, at the time the same is broadcast, be announced as paid for or furnished, as the case may be, by such person, firm, company, or corporation.

This matter was the result of the hearings held on a prior bill in the same Congress, H.R. 5589, which contained somewhat similar language. There the question of advertising and the use of radio by educational and similar groups was discussed. (See hearings by House Committee on Merchant Marine and Fisheries, 69th Cong., 1st sess., on H.R. 5589, pp. 31, 32, and 56–58.) The inclusion of this section in the bill and its eventual evolution into section 315 indicates the awareness of the Congress of the political potentialities of radio,

When section 5 was discussed on the floor of the House, Mr. Blanton succeeded in amending the section by attaching a proviso for punishment for criminal and civil slander of a person using derogatory language as follows (67 Congressional Record 5572):

> *Provided*, That any person who, over any radio, shall affecting the character and standing of another, use derogatory language, which, under the laws of any State into which such language is transmitted constitutes (a) slander or (b) libel were such language in writing, shall constitute (1) the offense of criminal slander, which may be prosecuted either in the State from which such language was broadcast, or in any State into which such language was transmitted and upon conviction, said offender shall be punished by a fine of not less than $100 and not more than $1,000, or by confinement in jail for a term not less than 30 days and not more than one year, or by both such fine and imprisonment; and (2) civil slander, for which the person aggrieved may make the offender respond in appropriate damages, under the measure of damages prevailing in such State.

The Blanton amendment was finally eliminated by a record vote just before the bill was passed by the House (67 Congressional Record 5645–5646).

On consideration of the bill by the Senate Committee on Interstate Commerce, the committee struck out all after the enacting clause and substituted a new bill. Section 4 of the substitute bill provided that matter broadcast for which the station was paid should be announced as paid for by the person, firm, company, or corporation purchasing the service. This was similar to section 5 of the House bill but the committee substitute added a provision that if the licensee should permit the station to be used for advertising purposes or by a candidate or candidates for any public office or for the discussion of any question affecting the public, he should make no discrimination as to the use of such station and with respect to these matters he should be deemed a common carrier in interstate commerce and should have no power to censor the material broadcast.

In reporting the substitute bill the Senate committee (S. Rept. 772, 69th Cong., 1st sess., p. 4) merely stated in respect to this addition that:

> All matter broadcast for hire shall be announced as paid material, and if any broadcasting station is used for hire or by political candidates or for discussing public questions, there shall be no discrimination and the licensee of such station shall be deemed a common carrier in interstate commerce and such licensee shall not have power to censor material broadcast.

On the floor of the Senate, Senator Dill, chairman of the committee, who was in charge of the bill, proposed an amendment to that part of section 4 of the committee substitute dealing with broadcast by political candidates as follows:

> If any licensee shall permit a broadcasting station to be used by a candidate or candidates for any political office, he shall afford equal opportunities to all candidates for such public office in the use of such broadcasting station: *Provided*, That such licensee shall have no power to censor the material broadcast under the provisions of this paragraph and shall not be liable to criminal or civil action by reason of any uncensored utterances thus broadcast.

In the discussion that followed (67 Congressional Record 12501–12505) the questions of whether radio stations should be common carriers in connection with (1) broadcasts for hire, (2) broadcasts by political candidates, and (3) broadcasts on public questions, were discussed. The Dill amendment was accepted and adopted by the Senate.

When the bill was considered by the conference committee, it split the section in two parts, placing the matter dealing with the announcement of paid broadcasts in section 19 while the Dill amendment was placed in section 18. The amendment was modified by the committee to apply it only to "legally qualified candidates" and providing further that no obligation is imposed upon a licensee by the section to permit any such candidate to use its station. In addition, the committee eliminated the language which relieved stations from criminal or civil liability by reason of any uncensored utterances under the provision. The language used was exactly that of the present section 315. The conference committee explained the section thus (H. Rept. 1885, 69th Cong., 2d sess., p. 18):

> Section 18 was not embodied in the House bill. It is a modification of one of the sections of the Senate amendment. It provides in substance that if any licensee shall permit a legally qualified candidate for public office to use a broadcasting station the licensee shall afford equal opportunities to all other candidates for the same office to use the station.

The bill was enacted and became the Radio Act of 1927 with section 18 as recommended by the conference committee.

Upon the enactment of the Communications Act of 1934, section 18 of the Radio Act of 1927, was carried forward in a substantially unaltered form as section 315.

RECENT INTERPRETATION OF SECTION 315

On February 19, 1959, the Federal Communications Commission issued its interpretation relating to the applicability of section 315 to certain newscasts by a number of Chicago television stations. The interpretations issued by the Federal Communications Commission were based on the following facts:

Primary elections for the office of mayor of Chicago, Ill., were scheduled for February 24, 1959. Richard J. Daley, mayor of Chicago, was a candidate in the Democratic primary; Timothy Sheehan was a candidate in the Republican primary; and Lar Daly was a candidate in both primaries. Prior to February 24, Lar Daly filed a complaint

alleging that certain Chicago television stations had, in the course of their newscasts, shown film clips of his primary opponents in connection with certain events and occasions, that he had requested equal time of said stations, and that his requests had been refused.

In reply to the Commission's inquiry as to the facts of said newscasts, the stations involved submitted descriptions thereof. After careful consideration the Commission, on February 19, 1959, advised the stations involved of its interpretations in the matter. With two exceptions the Commission, by unanimous vote, held that the film clips constituted a section 315 use entitling Lar Daly to equal opportunities. The unanimous votes covered, among others, film clips on newscasts showing (*a*) Mayor Daley and Candidate Sheehan filing their political petitions as candidates for the Democratic and Republican mayoral nominations with the Chicago city clerk and (*b*) the formal endorsement of Sheehan's candidacy by the Chicago Republican Committee. The same ruling followed a 4 to 3 vote on the two exceptions, consisting of Mayor Daley's greeting of President Frondizi of Argentina at Midway Airport in Chicago and Mayor Daley's appeal for contributions in connection with the March of Dimes campaign. The Commission reaffirmed its ruling on June 15, 1959, and the full text of the ruling has been made part of the printed hearings.

Over the years the consensus has been that section 315 did not apply to news coverage of political campaigns. And, the Commission in the 32-year period prior to the Lar Daly case has never so considered this provision. Thus, for three decades, in spite of the many legislative proposals dealing with political broadcasting, no serious challenge has been made to the established station practice of inserting recorded extracts of appearances by candidates into their radio and television news broadcasts.[1]

The Columbia Broadcasting System, in its supplementary petition of motion for reconsideration and declaratory ruling, before the Federal Communications Commission, filed on March 23, 1959, stated:

> It is our best information and belief that stations generally, as well as the three television networks, have operated on the understanding—confirmed by the Blondy ruling when it was originally made and confirmed again as recently as October 1958 when this ruling was added to the Commission's official compilation of rulings on political broadcast questions—that there is no "use" under section 315 where news is presented at the initiative of the station as part of a routine news broadcast in the exercise of the station's judgment as to newsworthy events.

In *Allen H. Blondy*, 14 R.R. 1199, (1957), the question presented was whether there was a "use" under section 315 when a station, as part of a newscast, used film clips showing a legally qualified candidate as one of a group in official ceremonies and the newscaster, in commenting on the ceremonies, mentioned the candidate and others by name and described their participation. The Commission ruled that, since the candidate had in no way directly or indirectly initiated either filming or presentation of the event and since the broadcast was nothing more than a routine newscast by the station in the exercise

[1] See Department of Justice letter to Senate Committee on Interstate and Foreign Commerce, dated July 1, 1959, which appears at the end of this report.

of its judgment as to newsworthy events, there was no "use" under section 315.

Subsequently the Commission codified the Blondy ruling in the October 6, 1958, official release entitled, "Use of Broadcast Facilities by Candidates for Public Office." See Public Notice FCC 58–936, III–12.

It is interesting to note the testimony of former Senator C. C. Dill, who was in charge of legislation on the floor of the Senate when section 18 of the Radio Act of 1927, now section 315, was enacted. When he appeared before the committee on June 18, 1959, to offer his views on the proposed legislation, he was asked by Senator John O. Pastore, chairman of the Subcommittee on Communications:

> Mr. Dill, when you chose the word "use" that appears in section 315, and I will read that portion of the section—'If any licensee shall permit any person who is a legally qualified candidate for any public office to use'—did you mean that the candidate was responsible for initiating the broadcast?
>
> Mr. DILL. Yes; that was the thought.
>
> The CHAIRMAN. In other words the mere fact that a station would on its own decide to take a picture at a given time of an event which it considered to be newsworthy, was that in your judgment a use being made by the candidate?
>
> Mr. DILL. Not at all. And as I said, we had the news problem then, not the picture. We had the news problem. And as a candidate myself in those days I was anxious to put out such publicity as would get into the news on the radio, but it was never considered to be use of the radio as intended by the law.
>
> The CHAIRMAN. Because they could take it or leave it just as they wanted to?
>
> Mr. DILL. Yes; some candidates do things, as you probably well know and I do, to get into the news. But that is one of the ills that come with a thing of this kind.
>
> No, the term "use" was intended to be a use initiated by the candidate. No doubt about that. Nobody had any other thought.
>
> But when a broadcast station takes some one candidate and makes a news feature out of him, it is going beyond, I think, a regular news event, when they know he is a candidate, it seems to me, they are doing that. And it seems to me the Commission ought to have power probably to regulate that.
>
> Again I say you cannot tie these things down in my judgment by words, language or figures. You must leave it to the discretion of the men who have charge and who will meet the changing conditions.
>
> I am glad you asked the question about "use" because that is a fact. Nobody ever thought of it in any other way.
>
> I appreciate very much this opportunity to say this, because, as I say, I am quoted a great deal.
>
> * * * * * * *
>
> The CHAIRMAN. Senator Hartke?
>
> Senator HARTKE. You mentioned something which I thought was very pertinent. In the first place you don't

think that maybe the Commission has interpreted the word "use" in the way that you would?

Mr. DILL. I disagree with them. I think it is wrong.

CORRECTIVE LEGISLATION INTRODUCED

Following the February 19, 1959, interpretation in the so-called *Lar Daly* case, four bills were introduced in the U.S. Senate. S. 1585, by Senator Strom Thurmond; S. 1604, by Senator Gordon Allott; S. 1858, by Senator Vance Hartke and others; and S. 1929, by Senator Spessard Holland, and they were referred to the Committee on Interstate and Foreign Commerce.

The bills fell generally into two categories:

The first, S. 1604, by Senator Gordon Allott, and S. 1929, by Senator Spessard Holland, would exempt from the equal-time provision of the Communications Act any—

> appearance by a legally qualified candidate on any news program including news reports and news commentaries.

The second, S. 1585, by Senator Strom Thurmond, and S. 1858, by Senator Vance Hartke and others, would make a more comprehensive revision of section 315 by exempting from the equal-time provision—

> newscasts, news documentaries, news interviews, panel discussions, debate or similar type programs.

S. 1858, in addition, declares that a person may be considered a legally qualified or substantial candidate for nomination by a political party for the office of President or Vice President of the United States if (1) he is the incumbent of any elective Federal or statewide elective office of any State; or (2) he has been nominated for President or Vice President at any prior convention or caucus of his party; or (3) his candidacy is supported by petitions filed under the laws of the several States which, in the aggregate, bear a number of signatures, valid under the laws of the States in which they are filed, equal to at least (*a*) 1 percent of the total popular vote cast in the preceding presidential election for the candidate of such party, or (*b*) 200,000, whichever is smaller.

The provision concerning the presidential and vice presidential candidacy was designed to have an effect on the many "splinter" candidates in a national campaign and would force them to qualify on the level of serious candidates. It was contended that this would help the broadcasting industry to make more public service programing available to the public because the demands by the "splinter" candidates, who are required to receive equal treatment under existing provisions of the Communications Act would be eliminated.

Section 315 presently forbids the censorship of a political address made by a legally qualified candidate. Because of this restriction forbidding a broadcaster from censoring any material broadcast under section 315, a question has arisen as to the legal responsibility of the broadcaster in the event any defamatory or libelous statement is made by a legally qualified candicate. S. 1858 contains a provision which specifically states that no action shall be maintained by any person in any court against any licensee or his employee because of any

libelous or defamatory statements made by a legally qualified candidate unless the broadcaster or his employee participated in such a broadcast willfully and knowingly.

Also, it immunizes licensees from civil or criminal liability because of any defamatory or libelous statements made by a legally qualified candidate in a broadcast matter under the provisions of section 315 which presently precludes station censorship of such statements except in those cases where the licensee participated in the broadcast willfully and with intent to defame.

The liability of a broadcaster where a legally qualified candidate uses the facilities and makes a defamatory or libelous statement was raised in a case in North Dakota involving the Farmers Educational and Cooperative Union of America. The Farmers Educational and Cooperative Union brought suit against WDAY whose facilities were used. The Supreme Court of North Dakota held that WDAY was not responsible. The case was appealed to the Supreme Court of the United States which held that the station was not liable.[2]

The committee held 5 full days of hearings—June 18, 19, 23, 24, and 25. During that period, 35 witnesses were heard. The views of the interested Government agencies were received and made part of the record. Numerous statements and communications were received from the general public and outstanding leaders in the business, political, broadcasting, civic, and educational field, reflecting their views on the problem that was created as a result of the FCC's interpretation in the so-called Lar Daly case. In addition, conferences were held with various officials in and outside of government who had intimate day-by-day knowledge of applying the provisions of section 315, who knew the practical problems involved, and who were the most competent authorities available, on the question as to the need for legislation in this field.

The committee in evaluating the testimony developed during the hearings on S. 1585, S. 1604, S. 1858, and S. 1929, was satisfied that they were complete and exhaustive, particularly with regard to the situation created by the FCC's interpretative ruling in the Lar Daly case. The views expressed by the various witnesses ranged over a field of complete repeal of section 315, or at least extensive modification of that section, to no amendments, or maintaining the status quo.

NEED FOR LEGISLATION

A careful examination of the legislative history of section 315 of the Communications Act and its predecessor, section 18 of the Radio Act of 1927, reveals clearly that the fundamental objective of that statute was to require any licensee who had allowed any legally qualified candidate to use his facilities to afford equal opportunity to all other candidates for that same office. Its basic purpose was to require equal treatment by broadcasters of all candidates for a particular public office once the broadcaster made a facility available to any one of the candidates. This was a sound principle and the committee reemphasizes its belief in that objective. The equal time provision of section 315(a) was designed to assure a legally qualified candidate that he will not be able to acquire unfair advantage over an opponent

[2] Supreme Court decision, June 29, 1959, No. 248, October term 1958, *Farmers Union of America* v. *WDAY, Inc.*

through favoritism of a station in selling or donating time or in scheduling political broadcast. If the number of radio and television stations were not limited by available frequencies, the committee would have no hesitation in removing completely the present provision regarding equal time and urge the right of each broadcaster to follow his own conscience in the presentation of candidates on the air. However, broadcast frequencies are limited and, therefore, they have been necessarily considered a public trust. Every licensee who is fortunate in obtaining a license is mandated to operate in the public interest and has assumed the obligation of presenting important public questions fairly and without bias.

Under the present rigid Federal Communications Commission interpretation of section 315, a broadcaster cannot devote 1 minute to a legally qualified candidate participating in any program whatever the subject, be it atomic energy, the need for adequate defense, a road or bridge ribbon-cutting event, dedicating a post office, or opening a charity drive, without being compelled to make available a minute to every other legally qualified candadate to the same office.

Dr. Frank Stanton, the president of Columbia Broadcasting System, stated:

> * * * the Lar Daly ruling was perhaps the most severely crippling decision ever to be handed down with regard to broadcasting journalism. It forbids the broadcast media from functioning fully as radio and television representatives. Under that ruling we can report only secondhand. A news correspondent can tell the viewer or listener what a candidate said, what he looked like, but the audience to a news broadcast cannot hear the candidate, see what he has to say, or see the candidate as he said it.

Even the Federal Communications Commission recognizes that its present rigid interpretation of equal opportunity under section 315 does constitute a deterrent to stations permitting the use of their facilities by legally qualified candidates. The inevitable consequence is that a broadcaster will be reluctant to show one political candidate in any news-type program less he assumes the burden of presenting a parade of aspirants.

Radio and television are effective instruments of disseminating information to large numbers of people. They are a means of mass communications that bring information, fact, and views to the general public. One has only to look at the number of television sets outstanding—51 million—and radio receivers—130 million—in the hands of the public to comprehend the dependence of the public on the broadcast media for information. Robert Sarnoff, chairman of the board of National Broadcasting Corp., in his appearance before this committee stated:

> Today more Americans get their news from TV and radio than from any other media. There are about 2½ times as many television and radio stations as newspapers.

It is generally recognized that television can be a very valuable asset to a candidate and that the potential audience that a candidate may now reach because of television is far in excess of what it has been in the past. The committee recognizes that television has become an

integral part of political campaigning and it is one of the most universal sources of information for the voters about the candidate. Television has a tremendous potential to sharpen the public's interest in and knowledge of the Nation's political life whether it be on the national, State, or local level. It is able to present to the people in the big cities, as well as in the rural areas, a firsthand knowledge of the political candidate—how they look, how they speak, how they think, whatever variety of man they may be. If the present position of the Federal Communications Commission with regard to section 315 remains unchanged, the committee feels that this would tend to dry up meaningful radio and television coverage of political campaigns.

It has been truly stated that TV has the ability to reach wide audiences and to create an illusion of intimate presence in the home of the viewer by placing a performer on a particular program, be he a political candidate or an announcer. Television is able to do this because of its unique ability and technical capability of bringing sight and sound simultaneously into the set owner's home. The free give and take of the panel discussion program, the sharp searching questioning of the interview-type show and the on-the-spot coverage of news events such as political conventions, affords every viewer with a ringside seat. No one will question that the categories of programs exempted by this legislation serve to enlighten the public and that a broadcaster who offers news, news interviews, news documentaries, on-the-spot coverage of news events, or panel discussion programs is discharging his obligation to operate in the public interest by making such programs available.

The committee is not unmindful that the class of programs being exempted from the equal time requirements would offer a temptation as well as an opportunity for a broadcaster to push his favorite candidate and to exclude othere. That is a danger. The committee clearly recognizes this to be a definite obstacle but feels that the alternative to standing pat and maintaining status quo could lead to a virtual blackout in the presentation of candidates on the news-type programs. This would not, in the opinion of the committee, serve the public interest. An informed public is indispensable for the continuance of an alert and knowledgeable democratic society. The public should not be deprived of the benefits that flow from this dynamic form of communications during the critical times of a political campaign. The public benefits are so great that they outweight the risk that may result from the favoritism that may be shown by some partisan broadcasters.

In any event, the committee is cognizant of this pitfall and has, therefore, included in this bill two provisions which serve as a warning to all broadcasters that the discretion being granted them and the manner in which they employ it will be carefully screened. The committee has recommended that Congress reexamine this legislation at or before the end of a 3-year period in order to ascertain whether the remedy provided herein has proved to be effective and practicable. And to assist the Congress in this reexamination, the Federal Communications Commission is required to make a report annually setting forth:

(*a*) The information and data used by it in determining questions arising from or connected with this bill; and

(*b*) To make such recommendations as the Federal Communications Commission deems necessary to protect the public interest and to assure equal treatment of all legally qualified candidates for public office.

The committee proposes to keep a close liaison with the Commission with regard to this problem.

The committee feels certain that any attempt on the part of a broadcaster to feature a favorite candidate under the protection of the exemptions provided herein will quickly be brought to the attention of the proper authorities. Should the broadcaster abuse the discretion granted herein, the committee will move forward immediately to remedy the situation. It should be noted that the programs that are being exempted in this legislation have one thing in common. They are generally news and information-type programs designed to disseminate information to the public and in almost every instance the format and production of the program is under the control of the broadcast station, or the network in the case of a network program.

Under the provisions of each of the four bills (S. 1585, S. 1604, S. 1858, and S. 1929) the programs exempted from the provisions of section 315(a) were limited to those where the format and production are determined by the broadcaster and the network in the case of a network program. In addition, S. 1858 contained a provision limiting the exempted programs to those where a broadcaster was required to act in good faith in determining what was a newsworthy event and in no way designed to advance the cause of or discriminate against any candidate.

The committee was impressed by this approach and intended to adopt similar language in reporting legislation. However, the Federal Communications Commission urged this committee to eliminate any such provision on the ground that it would lead to protracted litigation as to what constitutes news, news interviews, news documentaries, and on-the-spot coverage of news events or panel discussion. Indeed, the Federal Communications Commission in its letter dated July 2, 1959, to Senator John O. Pastore, chairman of the Subcommittee on Communications, stated:

> The objection of the Commission to certain language in the Hartke bill is the following language on page 5:
>
> "(e) Where the format and the production and program are under exclusive control of the broadcasting station or by the network in the case of a network program as to content, presentation, length of time, and all other details and determine in good faith in the exercise of the broadcaster's judgment to be a newsworthy event and in no way designed to advance the cause of or discriminate against any candidate * * *"
>
> and the language appearing in the Harris bill, page 2, line 5:
>
> "Where the format and the production of the program and the participants therein are determined by the broadcast station or by the network in the case of a network program. (This is the same language found in the Thurmond bill.)
>
> "It would be much better for the Commission to cope with a single problem of developing interpretations as to what constitutes 'news, news interviews, news documentary,

> on-the-spot coverage of newsworthy events, panel discussions, or similar type program' without being required to determine the merits of a defense that even though not a newscast, etc., the broadcaster in good faith intended it to be a bona fide newscast."

In view of the fact that the Federal Communications Commission is charged with the responsibility for administering this legislation, the committee acceded to its wishes.

It should be pointed out that the July 2 letter from the Federal Communications Commission was forwarded to the committee after the Commission had had ample time to evaluate the testimony and proposals that were suggested during the course of the hearings. It is difficult to define with precision what is a newscast, news interview, news documentary, or on-the-spot coverage of news event or panel discussion. That is why the committee in adopting the language of the proposed legislation carefully gave the Federal Communications Commission full flexibility and complete discretion to examine the facts in each complaint which may be filed with the Commission. In this way the Commission will be able to determine on the facts submitted in each case whether a newscast, news interview, news documentary, on-the-spot coverage of news event, or panel discussion is bona fide or a "use" of the facilities requiring equal opportunity.

The Congress created the Federal Communications Commission as an expert agency to administer the Communications Act of 1934. As experts in the field of radio and television, the Commission has gained a workable knowledge of the type of programs offered by the broadcasters in the field of news, and related fields. Based on this knowledge and other information that it is in a position to develop, the Commission can set down some definite guidelines through rules and regulations and wherever possible by interpretations.

Concern has been expressed that the proposed exemptions will result in a change in procedure on the part of the Commission in disposing of complaints that may be filed under section 315. The committee feels that the Commission should adhere to its present procedure as closely as possible and to process every complaint as quickly and expeditiously as the facts in each situation will permit. The committee appreciates that each of a series of events widely separated may not spell out abuse but when viewed as a whole at a later date may bring a different result.

The Commission has adequate authority when it reviews the overall performance of a licensee as it relates specifically to the types of programs exempt by this legislation to issue an appropriate ruling as to whether there was an abuse of the exemption. Rulings in specific cases may lead to some dissatisfaction on the part of both broadcaster and candidates but whatever the ruling of the Commission in a specific complaint, the Federal Communications Commission can and should consider all complaints in the aggregate in reviewing the overall performance of a license.

The committee wants to make it clear that it agrees with the statement contained in Commissioner Fred Ford's letter to Senator John O. Pastore dated June 24, 1959, that the committee fully intends for the Commission to exercise the rulemaking authority in section 315(c) on questions arising under the provisions of this bill and relating to the

details concerning programs exempt from the operation of section 315(a).

The Commission must be mindful at all times that broadcasting is an integral part of our society and the public has become dependent upon this media for information, views, and facts. Broadcast journalism serves the public interest. It has made giant strides in the past 10 years through its distinctive capabilities to report directly and dramatically news of political campaigns to the people. This must be encouraged but care must be taken that the exemptions granted herein are not used as an umbrella of protection to heap abuse or favoritism on certain candidates.

Fear has been expressed that the adoption of legislation creating special categories of exemptions from section 315 would tend to weaken the present requirements of fair treatment of public issues. The Committee desires to make it crystal clear that the discretion provided by this legislation shall not exempt licensees who broadcast such news, news interviews, news documentaries, on-the-spot coverage of news events, or panel discussion programs from objective presentation thereof in the public interest. In recommending this legislation, the committee does not diminish or affect in any way Federal Communications Commission policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and matters of public controversy. This standard of fairness applies to political broadcasts not coming within the coverage of section 315 such as speeches by spokesmen for candidates as distinguished from the candidates themselves. The committee agrees with the views expressed in the Department of Justice letter to Senator Warren G. Magnuson dated July 1, 1959, wherein it is stated that the principle of fairness "would automatically be applicable to any additional types of political programing which might be exempt from the coverage of section 315. Inclusion of such language in any amendment to section 315 should not be construed as limiting the station's obligation to present conflicting views on public issues to the political situations covered in section 315 of the act—those exempted via this legislation."

Of course, the prohibitions against censorship as presently provided in section 315(a) would not apply to the exempted programs provided by this legislation. The responsibility of the broadcaster will be the same as it is for any program other than those declared to be a use of facilities under section 315(a).

The committee desires to commend the various Senators who worked tirelessly in preparing legislation on this vital and important subject. More particularly, Senator Strom Thurmond and Senator Vance Hartke, members of this committee, are to be commended for the careful manner in which they developed their proposals. Further study and a more extensive record must be developed before the committee can act on the other proposals contained in S. 1858. It is hoped that it can and will be done sometime in the future because the problems raised by Senator Hartke are so serious that remedies must be found if the public is to have full benefit of discussions of public issues on the air.

After carefully weighing the various pending bills and the testimony developed during the hearings, the committee unanimously decided

to report an original bill. In this manner the Senate would have before it a clean bill clearly setting forth the reflected judgment of the committee. This bill is the first major change in the equal-time provision of the Communications Act of 1934. Therefore, the committee desires to make it fully clear that the legislative history developed during the hearings on S. 1585, S. 1604, S. 1858, and S. 1929 applies equally to the original bill, reported favorably by this committee.

CONCLUSION

The bill reported herein would exempt from the provisions of section 315(a) news, news interviews, news documentaries, on-the-spot coverage of news events or panel discussion programs. In removing these programs in which legally qualified candidates are seen or heard from the scope of section 315 it places them in the same category as all other news, news interviews, news documentaries, on-the-spot coverage of news events, and panel discussion programs.

The proposal affords the licensee freedom to exercise his judgment in the handling of this type program despite the fact that a legally qualified candidate may appear or be heard on such a broadcast.

In establishing this category of exemptions from section 315, the committee was aware of the opportunity it affords a broadcaster to feature a favorite candidate. This is a risk the committee feels that is outweighed by the substantial benefits the public will receive through the full use of this dynamic media in political campaigns. Every reasonable safeguard must and will be established to prevent any partisan broadcaster from abusing this new right. The committee has faith in the maturity of our broadcasters and their recognition to serve the public interest. Nevertheless to assure prompt and decisive action this legislation provides for a reexamination of the entire problem to ascertain whether the bill herein reported has proved to be effective and practicable. The FCC is also directed to report annually all information and data used by it in determining questions arising from this legislation.

The committee feels that the proposal contained in this legislation is in the public interest and worth the risk being taken when contrasted with the alternative which is a blackout in the presentation of legally qualified candidates in the news-type programs. Broadcasting journalism is a way of our life as is reporting through newspapers and magazines. The public has become dependent upon it and is entitled to it. This must be recognized. The full use of this dynamic media should not be shackled nor should it be abused. The committee feels that the proposal set forth herein is workable and fair. The public interest should benefit from it. If not, adequate opportunity to remedy it is available.

ADDITIONAL VIEWS OF SENATOR VANCE HARTKE

All of us agree on the importance of reporting a bill to reverse the *Lar Daly* decision. Testimony at the hearing reaffirms the necessity of clearly exempting news-type programs from the category of "use." Not to do so would virtually paralyze the communications industry

in the reporting of news concerning political campaigns. Witness after witness testified that this decision will make efficient and competent reporting of the 1960 campaigns impossible. This bill is a step in the right direction only it does not go far enough. The public, however, will benefit. I was hopeful that the exemptions would include debates and similar-type programs.

In the interest of attaining the goal of reversing the *Lar Daly* decision which is absolutely necessary, I am supporting this bill on which there is a meeting of the minds.

Nevertheless, when I introduced S. 1858, I felt there was a need for a far-reaching examination of section 315. Therefore, my bill went much further than the others introduced; it defined "substantial" candidates and expressly exempted broadcasters from libel statutes when they are acting under section 315. I feel very strongly that the need remains for these changes. As for the former provision, S. 1858 sets up criteria to separate serious candidates from splinter candidates. Testimony at these hearings have indicated that the networks and broadcasters either support this provision wholeheartedly or feel the proposal merits serious study. Further, there still remains the problem of liability from libel suits. S. 1858 expressly grants immunity to broadcasters who are complying with section 315. The recent *WDAY* case, decided by the Supreme Court, gave temporary relief in this area by holding that the Federal law preempted the State cause of action. But one must remember that the decision was 5 to 4, with a very strong dissent. It remains in the interest of the broadcasting industry and the American people to write an express grant of immunity. Current legislation is before the Senate dealing with the problem of preemption. Should such legislation be passed in its present form, then, since there is no express preemptive language in section 315, the State libel causes of action would be revived. This gives proof positive that the libel problem of section 315 has not been permanently solved.

Therefore, I urge the committee to give these matters the more complete study and consideration which they deserve. I hope that the committee will continue to investigate these problems with a view toward amending the law before the 1960 campaign. Necessarily, most of the testimony in these hearings have dealt with the *Lar Daly* case. But I hope that the other members of the committee will concur with me in recommending that we give further consideration to the problems of defining substantial candidates and expressly granting libel immunity to broadcasters.

In conclusion, we must keep before us both short- and long-run goals. Immediately we must change the *Lar Daly* decision. But also we must not allow our energy and interest in making needed, far-ranging changes in section 315 to be dissipated by the rush of other business at the conclusion of this session.

AGENCY COMMENTS

Letter from the Federal Communications Commission dated July 2, 1959, and letter from the Department of Justice dated July 1, 1959, are set forth below:

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., July 2, 1959.

Hon. JOHN O. PASTORE,
U.S. Senate, Washington, D.C.

DEAR SENATOR PASTORE: As indicated to you Senator Thurmond's bill and Congressman Harris' bill are substantially the same. To a very large degree section (e) of Senator Hartke's bill is similar in purpose. The objection of the Commission to certain language in the Hartke bill is the following language on page 5:

"(e) Where the format and the production and program are under exclusive control of the broadcasting station or by the network in the case of a network program as to content, presentation, length of time and all other details and determine in good faith in the exercise of the broadcaster's judgment to be a newsworthy event and in no way designed to advance the cause of or discriminate against any candidate * * *"

and the language appearing in the Harris bill, page 2, line 5:

"Where the format and the production of the program and the participants therein are determined by the broadcast station or by the network in the case of a network program." (This is the same language found in the Thurmond bill.)

As indicated in the attached letter to Congressman Oren Harris, the Commission feels that if this language were stricken it would eliminate the probability of protracted litigation as to what constitutes news, news interviews, etc.

It would be much better for the Commission to cope with a single problem of developing interpretations as to what constitutes "news, news interviews, news documentary, on-the-spot coverage of newsworthy events, panel discussions or similar type program" without being required to determine the merits of a defense that even though not a newscast, etc., the broadcaster in good faith intended it to be a bona fide newscast.

Sincerely yours,

JOHN C. DOERFER, *Chairman.*

DEPARTMENT OF JUSTICE,
Washington, D.C., July 1, 1959.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR MAGNUSON: This is in response to your request for the views of the Department of Justice concerning the bills (S. 1585, S. 1604, S. 1858, and S. 1929), relating to the provisions for the allowance of equal time on broadcasting facilities to candidates for public office.

The bills pending before your committee fall roughly into two categories. The first, typified by S. 1604, would exempt from equal time

provisions any "appearance by a legally qualified candidate on any news program, including news reports and news commentaries, where the format and production of the program are determined by the broadcasting station, or by the network in the case of a network program and the candidate in no way initiated the recording or the broadcast."

S. 1585 and S. 1929 are similar to the above bill. S. 1858 would make a more comprehensive revision of section 315. It would exempt from section 315's equal time provisions any candidate's "appearance", not only "on any regularly scheduled or bona fide newscast", but also on any "news documentary, panel discussion, debate, or similar type program where the format and production * * * are under exclusive control of the * * * station * * * and in no way designed to advance the cause of or discriminate against any candidate * * *."

Beyond that, S. 1858 would (1) delimit persons deemed legally qualified candidates for election or nomination for President or Vice President of the United States within 315, and (2) immunize licensees from "civil or criminal" liability "because of any defamatory or libelous statement made by a legally qualified candidate * * * in a broadcast made under the provisions of this section (which precludes station censorship of such statements) except in those cases where the licensee "participated" in the broadcast "willfully, knowingly, and with intent to defame."

Both sorts of measure, then, would at the minimum, exempt from section 315's "equal time" requirements routine news coverage of political events. Over the years the consensus had been (as this Department's memorandum before the Federal Communications Commission, p. 5, put it), that section 315 did not: "* * * apply to routine news coverage of political campaigns. And the Commission, in the 32-year period prior to the Lar Daly case, has never so considered this provision * * * though these more than three decades have seen numerous legislative proposals dealing with political broadcasting, no serious challenge has been made to the established station practice of inserting brief recorded extracts of appearances by the candidates into their radio and television news broadcasts."

The petition filed with the Federal Communications Commission by the Columbia Broadcasting System summed up industry practice prior to Lar Daly. It stated:

"It is our best information and belief that stations generally, as well as the three television networks, have operated on the understanding—confirmed by the Blondy ruling when it was originally made and confirmed again as recently as October 1958, when this ruling was added to the Commission's official compilation of rulings on political broadcast questions—that there is no 'use' under section 315 where news is presented at the initiative of the station as part of a routine news broadcast in the exercise of the station's judgment as to newsworthy events." [1]

In this context—with the law apparently firmly fixed that section 315 did not apply to unsolicited and routine newscast coverage of political events—this Department over the years deemed that various

[1] (P. 12.) Supplementary petition and motion for reconsideration and declaratory ruling, before the Federal Communications Commission, filed Mar. 23, 1959, by the Columbia Broadcasting System. "It is significant that not one request for equal time based upon the news coverage was received by NBC in 1956 from any candidate for the Presidency. This fact alone indicates the general belief by the candidates themselves that section 315 does not apply to such situations." (P. 5.) Petition for reconsideration or for a declaratory ruling, before the Federal Communication Commissions, filed Mar. 12, 1959, by the National Broadcasting Co.

proposed amendments to section 315 posed policy questions on which no recommendation from us seemed warranted.

This was the position taken in our letter to you of May 29, 1957, in which Deputy Attorney General Rogers commented that an amendment to section 315 making separate provision for condidates for the Presidency or Vice Presidency of the United States "involved questions of policy concerning which the Department of Justice prefers to make no recommendation." The same view was expressed in a letter dated December 20, 1955, from the Deputy Attorney General to Hon. Percy Priest, chairman of the House Committee on Interstate and Foreign Commerce, commenting on a measure to exempt from section 315 "any news, news interview, news documentary, panel discussion, debate, or similar type program * * *."

But this context Lar Daly sharply altered. In Lar Daly the Commission held that section 315 obliges a station which used a brief news clip of a candidate's activities—without the candidate's prior knowledge or consent—to provide equivalent free time to all opposing candidates to use the station as they see fit. By requiring stations to provide equal time to all legally qualified candidates where a station uses a recording or newsreel shot of any candidate in its news programs, the Commission's ruling jeopardized stations' news reporting of candidates' activities. For stations would be unable to show a candidate making a speech or taking part in some civic activity, even if he were an incumbent officeholder, without providing free time to all legally qualified candidates for that office to use as they saw fit.

This threat to news coverage of political events by television and radio is a serious matter. In a nation where the people choose officials to make and carry out the laws an informed electorate is a primary perquisite. In light of Lar Daly's public import, then, this Department began looking into the matter soon after the FCC's decision was announced.

As a result of such study, this Department became convinced that the Commission's ruling accorded with neither the language of the statute nor its legislative history. The particular elections involved in Lar Daly's original complaint had long since passed. And the Commission was entertaining petitions for reconsideration filed by a number of persons concerned with the ruling's impact upon broadcast coverage of future elections. Thus, the issue before the FCC had been broadened to involve, not the rights of any particular candidate in any particular election, but rather the general problem of curtailment of news coverage of future elections. In these circumstances, it appeared appropriate to request the Commission's permission to present the views of the United States.

The FCC, however, reaffirmed Lar Daly in its interpretative opinion June 15 of this year. This Department believes the Commission's view lacks support in law. And it may well be overruled in the course of appeals filed by one of the networks on June 26, 1959. But considerable time will inevitably lapse before final decision in the pending appeal. The wisdom of amending section 315 to overturn Lar Daly, then, is ripe for consideration.

On the one hand, as a general rule in this area, Congress has wisely deemed the "better" course, not to legislate in complex detail, but rather "to allow the Commission to make rules and regulations governing" section 315's precise coverage (67 Congressional Record 12503).

On the other hand, the Commission has spoken, and now reaffirmed, its views on section 315's application to routine newscast showing of candidates. Decision by the Supreme Court is unlikely for some time. Thus, unless Congress acts, *Lar Daly* probably will curtail news coverage of election contests during time required for final judicial review.

With such factors uppermost, this Department suggests that Congress act now to overturn *Lar Daly*. This goal is the prime purpose of S. 1604 and of the proposal recently advanced by the Federal Communications Commission.

S. 1604 would exempt from section 315 any "appearance by a * * * candidate on any news program, including news reports and news commentaries, where the format and production of the program are determined by the * * * station * * * and the candidate in no way initiated the recording or the broadcast * * *." Whether or not enactment of this measure would do more than overrule *Lar Daly* turns on construction of the term "news commentaries." Should Congress wish to avoid any such question, close at hand is the language of S. 1858 (p. 5, line 2), exempting only appearances on a "regularly scheduled or bona fide newscast."

Much the same problems of definition are posed by the Federal Communications Commission's proposal to exempt, in addition to newscasts, "special events such as political conventions." Exemption of newscasts alone would likely restore section 315's coverage to the status quo before *Lar Daly*.[2]

This Department suggests enactment of legislation to exempt from section 315 regularly scheduled or bona fide newscast (S. 1858) or news programs (S. 1585). In connection with preparation of this Department's Lar Daly memorandum, we have studied the problem of 315's application to routine newscasts. It is that problem which we treated before the FCC. And it is to remendy the FCC's construction of section 315's coverage of newscasts that we believe legislation is called for now. In the area of newscasts treating political events, the public interest, to our view, is best served, not by section 315's flat equal time stringencies, but by good-faith adherence to licensees' time-honored obligation of insuring fair and balanced presentation of programs where political or other controversial issues are treated (FCC Public Notice 6305, Oct. 1, 1958, p. 1).[3]

On the other hand, the wisdom of legislation exempting more than routine newscasts from section 315—for example, panel discussion, debate or similar-type program (S. 1585 and S. 1858) or special events

[2] Even before Lar Daly, broadcast or telecast of "a speech" by a candidate "in connection with a ceremonial activity or other public service" entitled opponents to equal time (FCC, Public Notice 63585, Oct. 1, 1958. Use of broadcast facilities by candidates for public office, question 7, p. 2); and much the same went for "acceptance speeches by successful candidates for the nomination for the candidacy of a particular party for a given office * * *" (id. at p. 2, question 9). Not clear, however, is whether the simple telecast of a convention speech by a candidate or showing a candidate during a convention rollcall came within sec. 315 (cf. id. at p. 2), before Lar Daly.

[3] Should the Congress adopt the FCC proposal, care should be taken lest present requirements of fair treatment for public issues be weakened. Thus the FCC proposal specified that this proviso shall not exempt licensees who broadcast such news and special events from an objective presentation thereof in the public interest. However, under existing law, the Commission has held that a licensee's statutory obligation to serve the public interest includes the broad all-encompassing duty of providing a fair cross section of opinion in the station's coverage of public affairs and other matters of controversy. (See "*FCC Report on Editorializing by Broadcast Licensees*," 1 Pike & Fischer R.R. (pt. III) p. 91:201, et seq.). This general fairness standard is presently applicable to political broadcasting not coming within the coverage of section 315 (such as speeches by spokesmen for candidates, as contrasted with the candidates themselves. (See *Felix* v. *Westinghouse Radio Stations*, 186 F. 2d 1, cert. den. 341 U.S. 909.) It would automatically be applicable to any additional types of political programing which might be exempted from the coverage of section 315. Inclusion of such language in any amendment to section 315 should not be construed as limiting the station's obligations to present conflicting views on public issues to the particular political situations covered in section 315 of the act, or those exempted via this legislation.

(FCC proposal)—poses basic questions of public policy on which this Department has no special competence. Much the same goes for S. 1858's proposals delimiting qualified candidates for President and Vice President, as well as any licensee's liability for libel in connection with section 315 broadcasts.[4]

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

ROBERT A. BICKS,
Acting Assistant Attorney General, Antitrust Division.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

FACILITIES FOR CANDIDATES FOR PUBLIC OFFICE

SEC. 315(a). If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate. *Appearance by a legally qualified candidate on any newscast, news interview, news documentary, on-the-spot coverage of news events, or panel discussion shall not be deemed to be use of a broadcasting station within the meaning of this subsection.*

[4] In fact, the dimensions of this licensee libel problem may well have been seriously altered by the Supreme Court's decision June 29, 1959, in No. 248, October term 1958, *Farmers Union of America* v. *WDAY, Inc.*

O